IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 14TH AUGUST 2007 / 3RD SRAVANA 1929

WP(C).No. 2176 of 2006(H)

PETITIONER:

K. SHANAVAS, FORESTER (TRAINEE)
FORST TRAINING SCHOOL (ARIPPA),
TRIVANDRUM.

BY ADV. SMT.V.P.SEEMANDINI
SMT.T.B.REMANI
SMT.K.P.GEETHA MANI

RESPONDENTS:

THE KERALA PUBLIC SERVICE COMMISSION
REP. BY ITS SECREATARY, PATTOM,
TRIVANDRUM.

ADDL.R2 AND R3 IMPLEADED:

ADDL.R2. THE CHIEF CONSERVATOR OF FORESTS (ADMINISTRATION,
TRIVANDRUM.

IMPLEADED AS PER ORDER DT. 6/3/2006 IN IA.3136/2006.

ADDL.R3. DINESH SHANKER.N.T., FORESTER, KALPATTA RANGE,
SOUTH WAYANAD DIVISIOIN, WAYANAD DISTRICT.

IMPLEADED AS PER ORDER DT. 9/8/2006 IN IA.10612/2006.

BY GOVERNMENT PLEADER SRI.MANOJ - FOR ADDL.R2.
SRI.P.C.SASIDHARAN, SC, KPSC - R1.
SRI.K.JAJU BABU - ADDL.R3.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14/12/2006, THE COURT ON 14/8/2007 DELIVERED THE
FOLLOWING:

APPENDIX (WP.2176/2006)

EXT.P1: TIFICATE DT. 8/12/2003.

EXT.P2: TRUE COPY OF NOTIFICATION DT. 22/11/2005.

EXT.P3: TRUE COPY OF APPLICATION DT. 26/11/2005.

EXT.P4: TRUE COPY OF LETTE5R DT. 6/1/2006.

EXT.P5: TRUE COPY OF REQUEST LETTER DT. 12/11/2005.

EXT.P6: TRUE COPY OF RANK LIST DT. 25/2/2006.

EXT.P7: TRUE COPY OF ORDER DT. 20/1/2006.

EXT.P8: TRUE COPY OF ADVICE MEMO DT. 27/2/2006.

EXT.P9: TRUE COPY OF COMMUNICATION DT. 16/3/2006.

EXT.P10: TRUE COPY OF REVISED RULE

EXT.P11: TRUE COPY OF JUDGMENT IN OP.12528/01 DT. 5/2/2002.

EXT.P12: TRUE COPY OF INTERIM ORDER DT. 9/4/2001.

A.K. Basheer, J.

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W.P(C) No. 2176 of 2006

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Dated this the 14th day of August, 2007.

J U D G M E N T

Is the action of Kerala Public Service Commission (for short the Commission) in refusing to select the petitioner for the Forest Ranger's Course (Trainee) 2006-07 under the departmental quota legally valid and sustainable? In other words, was the Commission justified in taking the view that petitioner was not eligible for selection to the Course, since his probation was not declared either on the date of notification or on the last date fixed for receipt of application?

2. Petitioner is working as Forester in the Department of Forest. He entered the service on May 30, 2002.

3. On November 29, 2005, the Commission issued Ext.P2 notification inviting applications from eligible departmental candidates like Deputy Rangers and Foresters for selection to the Forest Ranger's Course (Trainee) 2006-07 to be conducted in various State Forest Service Colleges under the Directorate of Forest Education. One among the qualifications prescribed in the notification was that the Forester or Deputy Ranger who seeks selection should produce a certificate along with his application showing that he is an approved probationer or a “full member” in the category concerned. The last date for receipt of applications as indicated in the notification was January 11, 2006.

4. According to the petitioner, he had completed his

probation and passed the relevant tests (for clerical and protected staff conducted by the Commission) in June 2005 itself. But a formal order declaring his probation was issued only later. Therefore petitioner could not produce the certificate showing that he was an approved probationer or a full member, along with the application submitted by him in response to Ext.P2 notification. After processing the application, the Commission issued Ext.P4 communication on January 6, 2006 informing the petitioner that his application had been rejected since his probation as Forester had not been declared.

5. The prayer in this writ petition is to issue of a writ of certiorari to quash Ext.P4. There is a further prayer to issue a direction to the Commission to treat the petitioner as fully qualified to attend the Forest Ranger's Course (Trainee) 2006-07.

6. It is contended by the petitioner that the stipulation in the notification that the applicant should be an approved probationer is totally against the clauses contained in the Special Rules and the Central Rules governing the matter. It is also contended that in terms of Rule 20(b) of Part II KS & SSR, petitioner had completed probation as on the date of application for the post. Ext.P1 certificate would also show that petitioner had passed all the departmental tests and had thus become eligible for declaration of probation even before the date of notification.

7. In short it is contended by the petitioner that it should have been deemed that petitioner had completed probation from the date

when he actually completed the probation period successfully, though for administrative reasons a formal declaration was delayed. The Commission ought not to have ignored or overlooked the provisions contained in the Special Rules for Kerala Forest Subordinate Service or the Rules framed by the Government of India in the year 1992 in this regard.

8. Per contra, it is contended by the Commission that as on the date of notification or on the last date fixed for receipt of application, the probation of the petitioner had not been declared. In Clause 10(3) in Ext.P2 notification it had stipulated that the applicant should produce a certificate to show that he was an approved probationer or a full member, in the prescribed format appended to the notification. Petitioner had not produced such a service certificate along with his application as stipulated in the notification. The Commission had therefore issued Ext.P4 communication to the petitioner informing him that he could not be considered for selection to the training course.

9. In the additional counter affidavit it is further contended by the Commission that completion of the period of probation and actual declaration of probation are different and distinct. Even assuming that petitioner's probation was declared later, albeit with retrospective effect, the application of the petitioner was not liable to be entertained, since as admitted by the petitioner himself, he was not an approved probationer as on the date of application. The Commission has also placed heavy reliance on the general rules

which postulate that only an approved probationer can seek appointment by transfer. In short, the contention of the Commission is that the Rules of procedure of recruitment or the provisions contained in the General Rules cannot be violated.

10. By virtue of an interim order issued by this Court on January 25, 2006 the Commission had allowed the petitioner to write the written test held on January 30, 2006. He was allowed to participate in the physical test. Subsequently petitioner was placed at rank No.9 in Ext.P6 select list published by the Commission. Though the petitioner had thereafter filed an Interlocutory Application praying for a direction to respondent No.2 to depute him to the course pending the writ petition, the above prayer was declined by order dated March 30, 2006. Though the said order was challenged by the petitioner before the Division Bench in WA.735/2006, he did not succeed in getting a favourable order. However the Division Bench made it clear that "if any junior Forester similarly situated has been selected for training and thereby enjoying the benefit of accelerated promotion in preference to the appellant on the ground of his non-completion of training, appellant's right over such juniors for appointment to the higher category shall be protected provided he succeeds in the O.P."

11. Additional respondent No.3 who has got himself impleaded in the writ petition contends that going by his rank position in the list (rank No.22) he would be the next eligible person to join the training course and since the advice memo

issued to the petitioner had been kept in abeyance, he is vitally interested in the outcome of the writ petition .

12. It is pertinent to know that the post of Ranger is included as category I under Clause 1 of Kerala Forest Subordinate Service Rules. Four methods of appointment are provided for the said post. They are:

(01) Direct recruitment

(02) Appointment of Forest Apprentices in the manner prescribed in Rule 9.

(03) Promotion of Deputy Rangers and Foresters trained as Rangers in either of the Regional Forest Rangers' College, Coimbatore or Dehra Dun.

(04) Promotion of Deputy Rangers and Foresters who have not been trained as Rangers, but have had training as Foresters.

25% of the vacancies are set apart to be filled up by each of the above 4 methods.

13. As noticed already, petitioner is working in the Department as a Forester. He seeks promotion to the post of Ranger

as indicated in the third method above, under the departmental quota. The departmental candidates have to undergo training for 18 months in one of the Forest Training Colleges under the Directorate of Forest Education.

14. Rule 10(a) of the Kerala Forest Subordinate Service Rules provides for method of selection for the Rangers' post which is extracted hereunder:

> "10 (a) Selection of departmental candidates for deputation to the Rangers course shall be made in accordance with the following Rules:--
>
> 01 The qualification prescribed for the Forest Subordinates from time to time by the Government of India for admission to the rangers course will be followed.
>
> 02 The candidate should have passed the qualifying examination held by the Kerala Public Service Commission.
>
> Note:- The final selection from among those who have passed in qualifying examination shall be made by the Public

> Service Commission on the basis of merit after conducting a physical test.
>
> Provided that as between candidates of fairly equal merit, seniority in the Department shall be the determining factor.

A perusal of Rule 10(a)(i) extracted above shows that selection of departmental candidates for deputation to the Ranger's Course shall be made on the basis of the qualification prescribed for the Forest Subordinates from time to time by the Government of India. A departmental candidate who completes the training after his selection to the course becomes eligible for promotion after he completes the training course successfully. It is contended on behalf of the petitioner that the Special Rules do not postulate that a departmental candidate to be eligible for selection to the training course, should be an approved probationer or a full member of the service. What is provided in clause 2 of Rule 10(a) of the Special Rules quoted above, is only that the candidate should have passed the qualifying examination held by the Kerala Public Service Commission. The specific case of the petitioner is that he is a full member of the service as defined in Rule 2(7) of Part I KS & SSR. which reads thus:

> "2(7) Full member of a service

> means a member of that service who has been appointed substantively to a permanent post borne on the cadre thereof."

Petitioner was recruited through the Kerala Public Service Commission as a Forester with effect from May 30, 2002. It is also not in dispute that he possesses requisite educational qualification to be promoted as Ranger. He had passed the Forest Test (for clerical and protected staff) within the period of his probation. Ext.P1 certificate issued by the Commission on December 8, 2005 is pressed into service by the petitioner in support of the above contention. According to the petitioner he had acquired the obligatory test qualification on July 9, 2005. Ext.P7 order dated January 20, 2006 issued by the Forest Conservator shows that petitioner had successfully completed his probation on July 9, 2005. It is true that a formal order/declaration as contained in Ext.P7 was issued only on January 20, 2006 though he had completed the probation in July 2005 itself. While conceding that a formal declaration of his probation was not made on the date of notification or on the last date fixed for receipt of application pursuant to the said notification, it is contended by the petitioner that he had in fact successfully completed his probation long prior to the date of notification. There is considerable force in the contention raised by the petitioner that the administrative delay in making a formal declaration of completion of probation cannot act

as a detriment to the eligibility of the petitioner to attend the training course.

15. The contention of the Commission is that the departmental candidate who seeks promotion as Ranger under the departmental quota has to be an approved probationer or full member. Clause 10(3) of Ext.P2 deals with the above stipulation which requires the candidate to produce a service certificate to show that he is an approved probationer or full member. Rule 2(3) of Part I KS & SSR defines "approved probationer" thus:

> "2(3) Approved probationer in a service, class or category means a member of that service, class or category who has satisfactorily completed his probation and awaits appointment as a full member of such service, class or category"

As noticed already, a full member of a service means a member of that service who has been appointed substantively to a permanent post borne on the cadre thereof. There is no dispute that petitioner is a full member of a service since he was admittedly appointed as a Forester in a permanent post borne in the cadre concerned. The definition of approved probationer shows that an employee would become an approved probationer the moment he has satisfactorily completed his probation and awaits appointment as a full member of such service, class or category. A perusal of the definitions of approved probationer and full member with reference to the

service details of the petitioner will indisputably show that he had been appointed against a permanent post and that he had successfully completed his probation as on the date of the notification. Thus he had become eligible to attend the training course, the successful completion of which is a prime requisite under the Special Rules.

16. A noticed already, Special Rules do not provide that a departmental candidate should be an approved probationer or a Full Member in order to be eligible for admission to the training course. Ext.P10 Rules for the Ranger's Course in Forestry issued by the Government of India also do not postulate that a departmental candidate to be selected and sponsored by the State Government concerned, has to be an approved probationer.

17. In O.P.No.12528/2001 and connected cases, a learned single Judge of this Court had occasion to deal with an identical issue. While repelling the contentions raised by the departmental candidates who had challenged inclusion of their colleagues who were not approved probationers in the select list, it was held by this Court that the "stipulation that only approved probationers or full members are eligible to apply is ultra vires of the Special Rules and the Central Rules". A copy of the judgment rendered by the learned single Judge is on record as Ext.P11.

18. In yet another identical situation another learned single Judge of this Court in Ext.P12 order held that it cannot be insisted that the applicant should be an approved probationer on the last

date fixed in the relevant notification, particularly if the training course was to commence much later. The learned Judge took the view that what would be more relevant was the completion of probation on the date of commencement of the training course.

19. Reference has been made to Ext.P12 order passed by the learned Judge only to highlight the fact that the eligibility of a departmental candidate to attend the training course which is not by any means the last hurdle for promotion, has to be viewed in a rational manner, particularly for the reason that the Special Rules or the Rules framed by the Government of India do not prescribe that the departmental candidate being sponsored by the State Government concerned for the training course should be an approved probationer.

20. In the case on hand, the petitioner had indisputably completed his probation successfully, on passing the departmental test in July 2005. Ext.P2 notification was issued on November 22, 2005. Petitioner had submitted his application on November 26, 2005. The last date for receipt of application was January 11, 2006. By Ext.P7 order the Department had declared that petitioner had successfully completed his probation with effect from July 9, 2005. Therefore it is obvious that petitioner had become eligible for selection to the training course as on the date of notification and also on the last date fixed for receipt of application. In that view of the matter, I am satisfied that petitioner is entitled to succeed.

21. Resultantly Ext.P8 advice memo which was kept in

abeyance as indicated in Ext.P9 communication sent by the Commission shall be revived. The Commission shall issue fresh advice memo, if necessary, allowing the petitioner to participate in the Forest Ranger's Course (Trainee), forthwith. Petitioner shall be entitled to attend the course in accordance with the schedule/programme fixed by the authority concerned.

Writ Petition is allowed of in the above terms.

A.K. Basheer

Judge.

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